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10/807,999

03/24/2004

Mark H. Falahee

FLH-11702/29

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04/09/2009

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EXAMINER

PHILOGENE, PEDRO

ART UNIT

PAPER NUMBER

3733

MAIL DATE

DELIVERY MODE

04/09/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte: MARK H. FALAHEE

Application No. 10/807,999
Technology Center 3700

Mailed: April 8, 2009

Before ERIC W. HAWTHORNE, *Supervisory Paralegal Specialist*
HAWTHORNE, *Supervisory Paralegal Specialist*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on February 17, 2009. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

AMENDMENT AFTER FINAL

A review of the file indicates that on September 28, 2005 Appellant filed an Amendment After Final in response to the Final Rejection mailed July 25, 2005. It is not clear whether this Amendment has been considered because an Advisory Action has not been mailed. Clarification from the Examiner is required.

EXAMINER'S ANSWER, EVIDENCE RELIED UPON

Section §1207.02 of the *Manual of Patent Examining Procedure* (MPEP) (Eighth Edition, Rev. 7, July 2008) states:

(A) CONTENT REQUIREMENTS FOR EXAMINER'S ANSWER. The examiner's answer is required to include, under appropriate headings, in the order indicated, the following items:

. . . .

- (8) Evidence Relied Upon. A listing of the evidence relied on (e.g., patents, publications, admitted prior art), and in the case of nonpatent references, the relevant page or pages.

The Examiner's Answer mailed December 6, 2005 is deficient because the "Evidence Relied Upon" section fails to include the references Steffee (U.S. Patent No. 4,648,388), and Hunt (U.S. Patent 324,768) cited on pages 3 – 6 in the Examiner's grounds of rejection. Claims 6, 8, 9, and 11 – 13 are rejected under 35 U.S.C. § 102(b) as being anticipated by Steffe.

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Claims 1, 3 – 5, 7, and 10 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Steffee in view of Hunt.

Appropriate correction is required.

CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the Examiner to:

- (1) appropriately respond to the Amendment After Final;
- (2) vacate the Examiner's Answer mailed December 6, 2005;
- (3) provide a new Examiner's Answer including a correct "Status of Amendment" section in addition to correction to other sections as required;
- (4) to issue a PTO-90 citing the missing references listed under the Evidence Relied Upon section, paragraph (8); and
- (5) such further action as may be required.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

EWH/nhl

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